

We have no doubt that the views expressed by the last two learned judges reflect the correct interpretation of s 15 and 16 of the Act.

Section 16(1) gives a discretion to the minister which discretion he may or may not exercise depending on the facts of each case. It has however no application to an enquiry of the Advisory Board constituted under art 151 of the Constitution.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Ang Ghee Seng v Minister of Home Affairs, Malaysia & Anor

SUPREME COURT (KUALA LUMPUR) — CRIMINAL APPEAL
NO 05-145-90
HASHIM YEOP A SANI CJ (MALAYA), HARUN HASHIM SCJ
AND LC VOHRAH J
24 OCTOBER 1991

Preventive Detention — Detention order — Validity — Typographical error in detention order — Detention in police custody during journey to place of detention — When journey completed — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 6(1) and 6A(1)(a)(iii)

Preventive Detention — Typographical error — Spelling error in detention order — Whether order defective

The appellant against whom a detention order had been made was brought to the Pusat Pemulihan Akhlak, Muar where he was to be detained for two years. The detention order was dated 30 April 1990. The centre however refused to accept him because there was an error in the spelling of his name. The appellant was kept in police custody until 5 May 1990 and after the correction was made he was sent to and received by the said detention centre. It was argued in this case that his continued detention was unlawful as (a) the detention order was rendered defective by reason of the spelling error being corrected after the expiry of the 60 days prescribed by s 3(2) of the Dangerous Drugs (Special Preventive Measures) Act 1985; and (b) the detention in police custody for five days pending the correction of the spelling in the detention order was unlawful as the journey had been completed when the appellant reached the rehabilitation centre and his continued detention other than at the centre after the completion of the journey could be unlawful and not covered by the new s 6A(1)(a)(iii) of the Act. The learned judicial commissioner dismissed the application of the appellant and the appellant appealed.

Held, dismissing the appeal:

(1) The error in this case was clearly typographical and the validity of the detention order was not affected by the typographical error.

(2) The new s 6A(1)(a)(iii) of the Dangerous Drugs (Special Preventive Measures) Act 1985 makes it clear that no

A detention order shall be rendered invalid or inoperative by reason that the subject was during the duration of the detention order on journey in police custody (or any other custody) to the place of detention referred to in the detention order. The journey is completed only when the detainee is received by the rehabilitation centre.

[Bahasa Malaysia summary]

B Perayu yang terhadapnya perintah tahanan telah dibuat telah dibawa ke Pusat Pemulihan Akhlak, Muar, di mana ia akan ditahan untuk dua tahun. Perintah tahanan itu bertarikh 30 April 1990. Pusat itu enggan menerima perayu kerana terdapat kesilapan di dalam ejaan namanya. Perayu kemudiannya disimpan dalam tahanan polis hingga 5 Mei 1990 dan selepas kesilapan itu diperbetulkan ia telah dihantar dan diterima oleh pusat pemulihan akhlak itu. Telah diujjahkan di dalam kes ini bahawa tahanan se lanjutnya tidak sah oleh kerana (a) perintah tahanan itu telah tercacat oleh kerana kesilapan ejaan nama itu telah diperbetulkan selepas tamatnya 60 hari yang ditetapkan oleh s 3(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985; dan (b) tahanan di dalam tahanan polis untuk masa lima hari sebelum pembetulan ejaan nama di dalam perintah tahanan itu adalah tidak sah kerana perjalanan telah tamat apabila perayu sampai di pusat pemulihan itu dan tahanan lanjutan selain daripada di pusat itu selepas tamat perjalanan itu mungkin tidak sah dan tidak termasuk di bawah s baru 6A(1)(a)(iii) Akta itu. Yang arif pesuruhjaya kehakiman menolak permohonan perayu dan perayu telah membuat rayuan.

E **Diputuskan**, menolak rayuan itu:

(1) Kesilapan di dalam kes ini jelas adalah kesilapan taip dan kesahan perintah tahanan itu tidak terjejas oleh kesilapan taip itu.

F (2) Seksyen baru 6A(1)(a)(iii) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 menjelaskan bahawa perintah tahanan tidak dijadikan tidak sah atau tidak berkesan oleh kerana orang yang berkenaan itu pada masa perintah tahanan itu berada di dalam perjalanan di bawah tahanan polis (atau tahanan lain) untuk dibawa ke tempat tahanan yang disebut di dalam perintah tahanan itu. Perjalanan itu hanya tamat apabila orang tahanan itu diterima oleh pusat pemulihan itu.]

Case referred to

G 1 *PP v Koh Yoke Koon* [1988] 2 MLJ 301 (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3(2), 6(1), 6A(1)(a)(iii)

Appeal from: Criminal Application No 44-63-90 (High Court, Penang)

H

Karpal Singh for the appellant.

Suriyadi bin Halim Omar (Senior Federal Counsel) for the respondents.

Cur Adv Vult

I **Hashim Yeop A Sani CJ (Malaya)** (delivering the judgment of the court): The appellant was the subject of a detention order under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') whereby he was ordered to be detained for a period of two years at the Pusat Pemulihan Akhlak, Muar, Johore.

The detention order was dated 30 April 1990. The appellant was then taken to the rehabilitation centre but the centre refused to accept him because there was an error in the spelling of his name in the said detention order. Whereupon the appellant was kept at the police station in police custody until 5 May 1990 after which he was sent to and received by the said detention centre. During the period that he was detained in the police station a copy of the detention order was taken from him and was later returned to him with the correction in the spelling of the name which correction was purportedly initialled by the proper authority.

Two main issues were raised by the appellant before the learned judicial commissioner and before this court in support of the contention that his continued detention was unlawful.

The first issue relates to the correction made to the spelling of the name of the appellant in the detention order. The mistake in the spelling occurs only in respect of the alphabet 'C' which should be 'G' in that the correct name is 'Ang Ghee Seng' and not 'Ang Chee Seng'. The question was whether the detention order was rendered defective by reason of the spelling order being corrected after the expiry of the 60 days prescribed under s 3(2) of the Act.

The mistake in the spelling of the name was obviously a typing error and in all the documents pertaining to the detention, the I/C number of the appellant was correctly referred to in every one of them. Since the error was clearly typographical, the learned judicial commissioner was correct in rejecting the appellant's argument. The validity of the detention order was not affected by the typographical error.

The second issue is more substantive, that is whether the detention in police custody for five days pending the correction of the spelling mistake in the detention order was lawful.

It was argued on behalf of the appellant that the journey was completed when the appellant reached the rehabilitation centre and the continued detention of the appellant other than at the said rehabilitation centre after the completion of the journey would be unlawful and not covered by the new s 6A(1)(a)(iii) of the Act.

The new provision referred to was the direct result of *PP v Koh Yoke Koon*¹ which was an appeal against the order of habeas corpus granted by the trial judge where this court upheld the ruling of the trial judge that the period of detention in police custody at the Muar police station was unauthorized.

The new s 6A(1)(a)(iii) makes it clear that no detention order shall be rendered invalid or inoperative by reason that the subject was during the duration of the detention order on journey in police custody (or any

A other custody) to the place of detention referred to in the detention order. The intention of the amendment was not to render unlawful the detention where the detainee is detained elsewhere in police custody during the journey to the place of detention. The journey is completed only when the detainee is received by the rehabilitation centre.

B *Appeal dismissed.*

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

C

Newacres Sdn Bhd v Sri Alam Sdn Bhd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL
NO 02-117-91
JEMURI SERJAN CJ (BORNEO), HARUN HASHIM AND MO-
HAMED YUSOFF SCJJ
18 OCTOBER 1991

D

Civil Procedure — Dismissal of action — Application for — Issues of fact which could only be decided at trial proper — Claim for arbitration — No objection to recourse to court — Various steps taken in proceedings — Arbitration Act 1952, s 6 — Rules of the High Court 1980, O 33 r 2 & O 18 r 11

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Arbitration — Referring disputes to arbitration — No 'Scott v Avery' clause — Whether failure to refer matter to arbitration means there is no cause of action — No objection to recourse to court — Steps having been taken in court proceedings

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The appellant in this case had applied to dismiss the respondent's action against them on two grounds: (a) that the respondent was suing for payment of money while the contract was being performed; (b) that the respondent had not referred the dispute between the parties to arbitration. The application was dismissed in the High Court and the appellant appealed.

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Held, dismissing the appeal:

(1) There were several issues in this case which must be proved by extrinsic evidence. As such, these are matters that ought to be tried at the trial proper and they cannot be decided by recourse to O 33 r 2 read together with O 18 r 11 of the Rules of the High Court 1980.

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(2) In this case the appellant had not objected to the recourse to the court by the respondent and had taken various steps in the proceedings and even agreed for the case to be set down for trial. Even if the appellant were to apply for stay of the proceedings in the High Court under s 6 of the Arbitration Act 1952, his application would have failed.

[Bahasa Malaysia summary]

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Perayu di dalam kes ini telah memohon supaya tindakan responden terhadap mereka dibuang atas dua alasan: (a) responden telah menuntut bayaran wang sedangkan kontrak masih dilaksanakan; (b) responden tidak merujuk pertikaian itu untuk timbangtara. Permohonan telah ditolak di Mahkamah Tinggi dan perayu telah membuat rayuan.